

IN THE DISTRICT COURT OF THE UNITED  
STATES, IN AND FOR THE DISTRICT OF  
UTAH  
IN EQUITY

DOCKET No. 4427

THE UNITED STATES OF AMERICA, and ALBERT B. FALL, Secretary  
of the Interior, as Trustees of the Indians of the former  
Uintah and Ouray Indian Reservation,

Plaintiffs

vs.

CEDARVIEW IRRIGATION COMPANY, COLORADO PARK IRRIGATION  
COMPANY, DRY GULCH IRRIGATION COMPANY, T. N. DODD IRRIGA-  
TION COMPANY, OURAY VALLEY IRRIGATION COMPANY, UINTAH  
INDEPENDENT DITCH COMPANY, UINTAH RIVER IRRIGATION COMPANY,  
and WHITEROCKS IRRIGATION COMPANY, each and all of the fore-  
going being corporations; GEORGE Q. ALLRED, GEORGE AVERITT,  
ERASTUS S. BASTIAN, JOHN BENNETT, RAYMOND T. BONNIN, JOHN  
BURGESS, WILLIAM CHICHAS, VERNON COLLINS, HUGH COLTHARP,  
W. HORACE COLTHARP, JOHN W. COOK, THOMAS DURIGAN, CHARLES  
ELMER, DAVID ELMER, MARY A ELMER, RUSSELL FORSYTHE, LOU  
FRAUGHTON, THOMAS S. GUNN, HYRUM GURR, JOHN HALL, HAROLD  
F. HALL, JOSEPH H. HARDY, BERTHA E. HUGHEL, CHARLES HUTCHEON,  
WILLIAM KEEL, DANIEL LARSEN, HENRY B. LLOYD, RALPH MARIMON,  
ROBERT L. MARIMON, JOHN J. NIELSON, EDWARD L. OAKS, HYRUM E.  
OAKS, CHARLES R. OAKLEY, JOHN H. O'DRISCOLL, LESLIE O'DRISCOLL,  
HENRY P. OLSEN, JOHN A OLSEN, CULBERT L. OLSEN, GEORGE S.  
PACE, FRANK PETERSON, SAMUEL H. PULLEN, ALBERT RASMUSSEN,  
ADOLPHUS SESSIONS, NEWTON SHELTON, EDWARD C. SIMMS, BARBRIA  
E. SMITHSON, GEORGE THOMAS AND ISAAC N. WORKMAN,

defendants.

D E C R E E \_

This cause having come on to be heard at this term upon  
the complaint of the plaintiffs, the defaults and answers of  
the defendants, and the stipulations herein between the plaintiffs  
and certain of the defendants, and thereupon, upon consideration  
thereof, it is ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The plaintiffs, the United States, and the Secretary  
of the Interior as Trustees of the Indians on the former Uintah

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and Ouray Indian Reservation, and also the owners by grant of the allotments of deceased Indians on said Reservation, as against the Cedarview Irrigation Company, Colorado Park Irrigation Company, Dry Gulch Irrigation Company, T. N. Dodd Irrigation Company, Ouray Valley Irrigation Company, Uintah Independent Ditch Company, Uintah River Irrigation Company and Whiterocks Irrigation Company, each and all of the foregoing being corporations: George Q. Allred, George Averitt, Erastus S. Bastian, John Bennett, Raymond T. Bonnin, John Burgess, William Chichas, Vernon Collins, Hugh Coltharp, W. Horace Coltharp, John W. Cook, Thomas Durigan, Charles Elmer, David Elmer, Mary A. Elmer, Russell Fosythe, Lou Fraughton, Thomas S. Gunn, Hyrum Gurr, John Hall, Harold F. Hall, Joseph H. Hardy, Bertha E. Hughel, Charles Hutcheon, William Keel, Daniel Larsen, Henry B. Lloyd, Ralph Marimon, Robert L. Marimon, John H. Nielso, Edward L. Oaks, Hyrum E. Oaks, Charles R. Oakley, John H. O'Driscoll, Leslie O'Driscoll, Henry P. Olsen, John A. Olsen, Culbert L. Olsen, George S. Pace, Frank Peterson, Samuel H. Pullen, Albert Rasmussen, Adolphus Sessions, Newton Shelton, Edward O. Sims, Barbara E. Smithson, George Thomas and Isaac N. Workman, defendants herein, or any of them, and as against any demand or use whatever of them, or any of them, or any diversion or use of water by or through the ditches belonging to them or any of them, have the first and an exclusive right under a priority that antedates the third day of October, 1881, at all times to divert from the Uintah River and its tributaries by certain ditches and canals water in certain quantities at certain times and under certain conditions for the irrigation of certain lands and for certain domestic, culinary and stock-raising uses all as described and fixed by the following schedule and other parts of this decree.

Name of Ditch or Canal	Acres Irri- gated Under Each Ditch	Water per- mitted to divert each season in Acre Feet	Water per- mitted to divert each season in second feet
Uintah Canal)			
Canal No. 1 )	9374.62	28123.86	133.9
Harmes	827.88	2483.64	11.83
Bench	6836.85	20510.55	97.67
Bench	Town of Ft. Duchesne		.85
Henry Jim	1612.4	4837.2	23.03
Henry Jim	Town of Randlett		1.50
Ft. Duchesne	533.61	1600.83	7.62
Wissiu	325.70	977.10	4.65
A(Martha Washington)	73.47	220.41	1.05
B.(Meadows)	180.2	540.60	2.57
C(Princess Pat)	82.70	248.10	1.18

#3.

D(New)	185.80	557.4	2.66
Whiterocks	4454.47	13363.41	63.63
Farm Creek	1550.35	4631.05	22.15
School Ditch No. 1)	365.88	1097.64	5.23
Shhool D "2	12.60	37.80	.18
Springs	80.00	240.00	1.14
Deep Creek	6895.52	20686.56	98.51
Colorado Park	425.14	1275.42	6.07
Big Six	244.70	734.10	3.50
Daniels	151.00	453.00	2.15
Duncan	115.90	347.70	1.66
Farm Creek Proper	135.84	407.52	1.94
Tabby White	235.46	706.38	3.36
Whiterocks School)			
Pipe Line	) Domestic, Etc.		.85
Totals	34700.09	104100.27	498.88

The said 34,700.09 acres of land to be irrigated and the other uses under said ditches and canals are as more particularly described in the final certificates of appropriation for the several said named ditches and canals as the same may appear upon the records of the office of the State Engineer of the State of Utah, and which are numbered to-wit: 1172, 1173, 1174, 1176, 1177, 1208, 1211, 1212, 1219, 1223, 1224, 1232, 1233, 1234, 1235, and the final certificate yet to be issued under plaintiff's filing No. 357.

The location of the head or intake of each of the said ditches or canals is as follows:

The head of the Uintah canal is on the right bank of the Uintah River and bears N. 76-8' E. 574 ft. from the quarter corner common to secs. 9 and 10, Twp. 1 N R 1 W., U.S.M.

The head of Canal No. 1 is on the right bank of the Uintah River and bears S 76-30'E 700 ft. from the northwest corner of Sec. 25, Twp. 1 N R 1 W U.S.M.

The head of the Harmes Canal is on the left bank of the Uintah River and bears N 46-32'W 3000 ft. from the center 1/16 corner of SE $\frac{1}{4}$  of Sec. 6, Twp. 1 S. R 1 E. U.S.M.;

The head of the Bench Canal is on the right bank of the Uintah River and bears N 29-10'W 637 ft. from the East quarter corner of Section 18, Twp. 1 S. R. 1 E. U.S.M.;

The head of the Henry Jim Canal is on the left bank of the Uintah River and bears N 47-13'W 591 ft. from the North quarter corner of Sec. 35, T 2 S R 1 E U.S.M.;

The head of the Ft. Duchesne Canal is on the right bank

#4.

of the Uintah River and bears S 70-7'E. 1553 ft. from the West quarter corner of Sec. 35, T 2 S., R. 1 E. U.S.M.;

The head of the Wissiup Canal is the same as the Henry Jim and is located on the left bank of the Uintah River and bears S 77-57'W 1207 ft. from the North 1/16 corner of the SW $\frac{1}{4}$  of Sec. 35 Tp. 3 S., R. 2 E. U.S.M.;

The head of Ditch A is on the left bank of the Uintah River and bears N 53-5'W 1616 ft from the South quarter corner of Sec. 31, Tp. 1 N. R 1 E U.S.M.;

The head of Ditch B is on the left bank of the Uintah River and bears N 28-17'W 1825 ft from the North 1/16 corner of the SE $\frac{1}{4}$  Sec. 7 Tp. 1 S R 1 E U.S.M.;

The head of Ditch C is on the right bank of the Uintah River and bears S 5-10'W 1575 ft. from the North 1/16 corner of the SE $\frac{1}{4}$  Sec. 7 Tp 1 S. R 1 E U.S.M.

The head of Ditch D is on the right bank of the Uintah River and bears S 0-5'E 730 ft. from the north quarter corner of Sec. 7 Tp. 1 S R 1 E U.S.M.;

The head of the Whiterocks Canal is on the left Bank of the Whiterocks River, a tributary of the Uintah River, and bears N 64-54'W. 2528 ft. from the east 1/16 corner of the SE $\frac{1}{4}$  Sec. 19, Tp 2 N R 1 E U.S.M.;

The head of the Farm Creek Canal is on the right bank of the Whiterocks River, a tributary of the Uintah River, and bears N 48-8'E 921 ft. from the north quarter corner of Sec. 30 Tp 2 N R 1 E U.S.M.;

The head of the school Ditch No. 1 is on the right bank of the Whiterocks River, a tributary of the Uintah River, and bears N 38-30'E 2335 ft. from the west 1/16 corner of the SW $\frac{1}{4}$  Sec. 18 T 1 N R 1 E U.S.M.;

The head of School Ditch No. 2 is on the left bank of the Whiterocks River, a tributary of the Uintah River, and bears N 16-18'E 1485 ft from the south 1/16 corner of the SW $\frac{1}{4}$  Sec 18 T 1 N R 1 E U.S.M.;

The heads of the Spring ditches are in Secs. 4 & 5 Tp. 1 S., R. 1 E. U.S.M.;

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The head of the Deep Creek Canal is on the left bank of the Whiterocks River, a tributary of the Uintah River, and bears N 78-8'W 1550 ft. from the center 1/16 corner of the NE $\frac{1}{4}$  Sec 5 Tp 1 S., R 1 E. U.S.M.;

The head of the Colorado Park Canal is on the left bank of the Uintah River and bears N 78-57'W 2250 ft. from the south quarter corner of Sec. 26, Tp 1 S R 1 E U.S.M.;

The head of the Bix Six Canal is on the right bank of the Uintah River and bears N. 57-52'E 1417 ft. from the southwest corner of Sec. 31 Tp 1 N R 1 E U.S.M.

The head of the Daniels Ditch is on the right bank of the Uintah River and bears N 50-18'W 731 ft from the east 1/16 corner of the SW $\frac{1}{4}$  Sec 22 Tp 1 S R 1 E U.S.M.;

The head of the Duncan ditch is on the right bank of the Whiterocks River, a tributary of the Uintah River, and bears N 23-13'E 5500 ft. from the southwest corner of Sec. 7, Tp 1 N R 1 E U.S.M.;

The three heads of the Farm Creek Proper ditches diverting water from Farm Creek, a tributary of the Uintah River, are in Sec. 23, T 2 N., R 1 W. U.S.M.;

The head of the Tabby White ditch is on the left bank of the Uintah River and bears N 68-33'W 1195 ft. from the south 1/16 corner of the SW $\frac{1}{4}$  Sec. 26, Tp 1 S R 1 E U.S.M.1

The head of the Whiterocks School Pipe Line is on the right bank of the Whiterocks River, a tributary of the Uintah River, in Sec. 18, Tp. 1 N R 1 E U.S.M.;

2. The water permitted to be diverted by said ditches and canals for irrigation shall be diverted only during the irrigation season of each year, and said season shall not begin before the first day of March or end later than the first day of November; but water may be diverted for domestic, culinary and stock-watering purposes throughout the entire year.

3. The number of acre feet of water permitted to be diverted by each of the ditches and canals above listed, on account of the rights determined in this decree as shown in paragraph one hereof, is the amount of water which may be diverted for irrigation by each of said ditches during the said irrigation season, and in no case shall said amount be exceeded; and the number of second feet of water permitted to be diverted by each of said ditches and canals on account of said rights as shown in said paragraph one shall be the maximum amount of water each of said ditches may divert at any time on account of said rights.

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4. No water shall be diverted by said ditches and canals or any of them for irrigation purposes except that which is needed for economical and beneficial use in the irrigation of crops, and no water shall be diverted for other purposes except as hereinabove in paragraph two allowed, and only such quantities thereof shall be diverted as shall be needed for economical use for said purposes. Said diversions for domestic, culinary and stock-watering uses shall be permitted as needed throughout the year.

5. The defendants herein all divert water from the Uintah River or from one or more of its tributaries, or from supporting waters of said streams through the ditches which they respectively claim to own,

6. The said defendants and their agents and employees, officers, successors, and assigns, and all persons diverting or using water through or under their ditches or any of them, they and each of them, are hereby perpetually enjoined from in any way hindering, preventing or interfering with the diversions or uses of the waters of said river herein decreed to the plaintiffs, or their assigns.

7. For the protection of the water rights herein decreed, a Water Commissioner shall be appointed from time to time, and assistants shall be given him if necessary, and his and their compensation shall be fixed and allowed, and arrangements for the payment thereof by those who benefit thereby, parties hereunto, shall be made, and said Water Commissioner shall be further directed as to his duties, all by separate orders of this Court.

8. In order further to protect the prior rights of the plaintiffs herein decreed, and to do so in the way best suited to conserve the rights and interests of the defendants, who are all junior appropriators, collectively as against the plaintiff, and as against each other, and to insure the most economical use of the waters of said stream, the Water Commissioner shall not only see that the priorities of the plaintiffs are satisfied, but shall also distribute the waters of the stream among the various defendants according to their priorities and rights as they may be ascertained from time to time by agreement between said parties or in some other proper manner. The rights and priorities of said defendants as against the plaintiffs or as among themselves are founded upon appropriations of water by application to the State Engineer of the State of Utah and are subject to their exercise and are conditioned upon compliance with the provisions of the laws of the State of Utah relating to the appropriation of water and such rights and priorities are not hereby determined, except that they are all junior to those of the plaintiffs herein decreed, and except further that

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it is hereby decreed that said defendants shall be permitted to divert from said streams during the irrigation season of each year for direct irrigation, which shall not begin before the first day of March or end later than the first day of November, three acre feet of water for each acre of land irrigated and no more, and shall at no time divert more than one seventieth of a second foot of water for each said acre, and that no water shall be diverted for irrigation except that which is needed for economical and beneficial use in irrigating crops. Water may be diverted for domestic, culinary and stock-watering purposes during the entire year. No water shall be diverted for any purpose in excess of that actually needed for such purpose.

9. This decree determines the rights of the plaintiffs to divert water from the Uintah River and its tributaries as against the defendants but it does not determine any rights the plaintiffs or the defendants may have to the waters of the Duchesne River or any stream or streams into which the waters of said Duchesne River flow either mediately or immediately. This decree furthermore does not determine the right, if any, that the purchaser of any allotment of an Indian, who made such purchase prior to the entry hereof, may have to irrigate a greater acreage than that allowed by this decree.

10. Jurisdiction of this cause is retrained to enable this court, for good cause and as occasion may require, to administer this decree through a Water Commissioner or otherwise; to alter any administrative provisions hereof; and to make other necessary changes herein except to increase the total seasonal amount of water that may be diverted or to change the priority herein fixed or to increase the acreage which may be irrigated under said priority.

11. That each party hereto bear its own costs incurred herein.

Done in open Court this 16th day of March, A. D. 1923.

Tillman D. Johnson,

JUDGE

Filed in United States District  
Court, District of Utah, March  
16, 1923.

John W. Christy, Clerk.

# CONSOLIDATED IRRIGATION CO'S.—DEFENDANTS

IN THE U. S. INDIAN WATER SUIT

## EXECUTIVE COMMITTEE

J. AUSTIN PACK, PRES.  
ART J. KOOYMAN, SEC'Y-TREAS.  
O. H. BRACKEN  
ROBERT MARSHALL  
R. W. SNYDER  
R. S. COLLETT

*agsum*  
*Wint*

ROOSEVELT, UTAH. Dec. 24, 1919.

Gov. Simon Bamberger,  
Salt Lake City, Utah.  
Dear Governor:-

In compliance with the understanding reached at Washington between our committee, yourself and others with the Indian department, our executive committee met with the Government Attornies at Salt Lake City, to procure their best terms on a compromise of the pending water suit between our companies and the United States Indian Department.

We are forwarding you a copy of stipulations drawn by them and also a copy of stipulations drawn by us, showing the basis upon which we are willing to compromise. The fourteen year period in which the Indian department was given to make beneficial use of the water under state law expired in June, 1919. On application to Judge Morgan they were granted a further extension of time to January 1st, 1921. We are protesting this extension and the Judge has consented to reopen the case as his decision was made on an ex parte hearing. However we would be willing to withdraw our protest of this extension if we could get any kind of a reasonable compromise with them.

You will see by their stipulations that they have yielded nothing, although we have been in conference with them several times trying to reach a compromise.

We would appreciate it very much if you would take the matter up with Senator Southerland, who we understand is representing the State, and who is no doubt the best informed of any man interested in the case. We would like very much to get rid of this suit, that we might be able to borrow money for storage purposes, but we do not want to submit to their unreasonable demand if there is any chance to win by fighting the case. Anything you can do for us in the matter and any suggestions from Senator Southerland will be very much appreciated.

Yours very truly ,

EXECUTIVE COMMITTEE OF THE DEFENDANT COMPANIES

*J. Austin Pack*  
Chairman

Secretary

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vs

CEDERVIEW IRRIGATION COMPANY, et al.

This cause having come on to be heard at this term upon the complaint of the plaintiffs, the answer of defendants and the stipulations herein between the plaintiffs and certain defendants herein named, and thereupon, upon consideration thereof it is ordered, adjudged, and decreed as follows:

The plaintiffs, the United States and the Secretary of the Interior as Trustee of the Indians in the former Uintah and Ouray Indian Reservation, and also the owners by grant, of the allotments of deceased Indians on said Reservation, have the prior right to the waters involved in accordance with the applications heretofore filed with the State Engineer of the State of Utah, and such priority shall extend to that amount of water which has been actually and beneficially applied by and for them and used on the Indian lands up to and including December 31st, 1919.

It is further herein stipulated and agreed that the said Indians on the former Uintah and Ouray Indian Reservations did not have to exceed 1200 acres under cultivation, and on which water had been beneficially applied thereto, on April 1st, 1906, or at any time previous, and to that extent only shall the plaintiffs have a prior and immutable right in and to waters sufficient to irrigate that said acreage, in a proper and farmerlike manner and no more, except as hereinafter contained.

It is understood and agreed by and between the parties plaintiff and defendant that the final proof of appropriation, which the plaintiffs and defendant shall submit to the State Engineer in and for the State of Utah shall be the basis upon which the waters shall be distributed by and under the terms of this decree in and to said plaintiffs and to said defendants, and that all of such waters as so decreed shall thereafter be subject to the now existing laws in force in the State of Utah effecting said waters, or such laws as may hereafter be enacted pertaining to the waters of the State of Utah and under its jurisdiction.

the United States or remains in any Indian or Indians who or wards of the United States or in any Trustee for said Indian wards.

The defendants bound by this decree are the following; \_\_\_\_\_  
\_\_\_\_\_ and their agents and employes, officers, successors and assigns, and they and each of them are hereby perpetually enjoined from in any way interfering with said diversion and said use of any part of said water for any of said purposes.

The court retains jurisdiction over this cause and all the issues embraced therein, and of the said defendants and may modify this decree from time to time, but not to fix a later date of priority for ~~for~~ the water rights or any of them herein decreed <sup>to</sup> for the plaintiffs or to the owners by grant of allotments of deceased Indians or to reopen the question of the area of land they or any of them are now entitled to irrigate as herein determined, or to increase the herein above determined aggregate <sup>of</sup> water that the said plaintiffs or said owners of allotments of deceased Indians are entitled to divert from said Uintah River and its sources and tributaries.

A water commissioner appointed by this court and changed, removed or substituted for as the court shall from time to time order, shall execute and carry out the provisions of this decree under powers and duties as this court shall from time to time by order, fix, and the said commissioner and his necessary assistants, if any, shall be paid as compensation, for his and their services, by the owners of the water rights herein decreed and their heirs, successors and assigns, and by the defendant bound hereby and their heirs, successors and assigns, as this court shall from time to time determine and the acts of said commissioner and the execution of this decree shall at all times be under the control and supervision of this court.

It is further ordered adjudged and decreed that a writ of injunction issue herein enjoining said named defendants and each of them, their officers and employes, successors and assigns, as hereinabove provided.

Dated this \_\_\_ day of \_\_\_\_\_ 1919.

BY THE COURT.

\_\_\_\_\_  
Judge.

GOVERNMENT STIPULATION.

United States, et al

vs

No.4427

Cederview Irrigation Co. et al.

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This cause having come on to be heard at this time upon the complaint of the plaintiffs, the answers of the defendants and the stipulations herein between the plaintiffs and certain defendants herein after named and thereupon, upon consideration thereof, it is ordered adjudged and decreed as follows:

The plaintiffs, the United States and the Secretary of the Interior as Trustee of the Indians, in the former Uintah and Ouray Indian Reservations and also the owners by grant of the allotments of the deceased Indians on said reservation have the first and exclusive right under priority, that is immemorial, and antedates the third day of October 1861, ~~xx~~ at all times as against the defendants hereinafter named, or any of them and as against any demand or use whatever of them, or any of them, to divert through ditches as now located or as the same may hereafter be extended or changed so much water from the Uintah River and its sources and tributaries not exceeding in the aggregate 309 second feet as may be needed for economical and beneficial use for culinary, domestic, stock and irrigation purposes, or for any one or more of said purposes, upon 175 acres of Whitrock Indian School Lands, 150 acres of Fort Duchesne Indian Agency Lands and 21,310 acres of agricultural lands situate partly in Uintah County and partly in Duchesne County in the State of Utah and here to for allotted in severalty to the Indians of said reservation, provided, however, that no part of the said 309 second feet of water shall be diverted at any time in excess of the quantity reasonably necessary for said uses and purposes when economically and beneficially applied; and provided further that the amount of water herein decreed, the priority of right thereto, and the economical and beneficial use thereof as against said defendants or any of them shall in no wise depend upon or be modified or affected by any final proof of appropriation which the plaintiffs herein or the said owners by grant of allotments of deceased Indians may hereafter make to the State Engineer of the State Of Utah, or be modified or affected by the laws of the State of Utah, while the title thereto remains in

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A water commissioner may be appointed by the State Engineer of the State of Utah, and changed, removed, or substituted for as that officer shall from time to time order, who shall execute and carry out the provisions of this decree under the powers and duties of his office; and the said commissioner and his necessary assistants, if any, shall be paid as compensation for his and their services, pro rata by the owners of the water rights herein decreed, and their heirs, successors and assigns; and the acts of the said commissioner and the execution of this decree shall at all times be under the control and supervision of the State Engineer, in and for the State of Utah.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1919.

BY THE COURT

\_\_\_\_\_  
Judge.